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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Siemens Medical Solutions USA, Inc.,

Plaintiff,

v.

The Conrad Corporation d/b/a Conquest Imaging

Defendant.

Case No. 3:11-cv-04872-SC

**~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER**

Honorable Samuel Conti

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under

1 the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4, below,
2 that this Stipulated Protective Order does not entitle them to file confidential information under
3 seal; Civil Local Rule 79-5 and General Order 62 set forth the procedures that must be followed
4 and the standards that will be applied when a party seeks permission from the court to file material
5 under seal.

6 2. DEFINITIONS

7 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
8 information or items under this Order.

9 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is
10 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
11 Civil Procedure 26(c).

12 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
13 as their support staff).

14 2.4 Designated House Counsel: House Counsel who seek access to "HIGHLY
15 CONFIDENTIAL – ATTORNEYS' EYES ONLY" information in this matter.

16 2.5 Designating Party: a Party or Non-Party that designates information or items that it
17 produces in disclosures or in responses to discovery as "CONFIDENTIAL," "HIGHLY
18 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE
19 CODE."

20 2.6 Disclosure or Discovery Material: all items or information, regardless of the
21 medium or manner in which it is generated, stored, or maintained (including, among other things,
22 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
23 responses to discovery in this matter.

24 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
25 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as
26 a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
27 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or
28

1 of a Party's competitor.

2 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
3 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
4 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less
5 restrictive means.

6 2.9 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: extremely
7 sensitive "Confidential Information or Items" representing computer code and associated
8 comments and revision histories, formulas, engineering specifications, or schematics that define or
9 otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure
10 of which to another Party or Non-Party would create a substantial risk of serious harm that could
11 not be avoided by
12 less restrictive means.

13 2.10 House Counsel: attorneys who are employees of a party to this action. House
14 Counsel does not include Outside Counsel of Record or any other outside counsel.

15 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal
16 entity not named as a Party to this action.

17 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this
18 action but are retained to represent or advise a party to this action and have appeared in this action
19 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

20 2.13 Party: any party to this action, including all of its officers, directors, employees,
21 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

22 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
23 Material in this action.

24 2.15 Professional Vendors: persons or entities that provide litigation support services
25 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
26 storing, or retrieving data in any form or medium) and their employees and subcontractors.

27 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
28 "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or as

1 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

2 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
3 Producing Party.

4 3. SCOPE

5 The protections conferred by this Stipulation and Order cover not only Protected Material
6 (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all
7 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
8 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
9 However, the protections conferred by this Stipulation and Order do not cover the following
10 information: (a) any information that is in the public domain at the time of disclosure to a
11 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
12 result of publication not involving a violation of this Order, including
13 becoming part of the public record through trial or otherwise; and (b) any information known to the
14 Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from
15 a source who obtained the information lawfully and under no obligation of confidentiality to the
16 Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement
17 or order.

18 4. DURATION

19 Even after final disposition of this litigation, the confidentiality obligations imposed by this
20 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
21 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
22 defenses in this action, with or without prejudice; and (2) final judgment herein after the
23 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
24 including the time limits for filing any motions or applications for extension of time pursuant to
25 applicable law.

26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
28 Non-Party that designates information or items for protection under this Order must take care to

1 limit any such designation to specific material that qualifies under the appropriate standards. To the
2 extent it is practical to do so, the Designating Party must designate for protection only those parts
3 of material, documents, items, or oral or written communications that qualify – so that other
4 portions of the material, documents, items, or communications for which protection is not
5 warranted are not swept unjustifiably within the ambit of this Order.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
7 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
8 encumber or retard the case development process or to impose unnecessary expenses and burdens
9 on other parties) expose the Designating Party to sanctions.

10 If it comes to a Designating Party's attention that information or items that it designated for
11 protection do not qualify for protection at all or do not qualify for the level of protection initially
12 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the
13 mistaken designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
15 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
16 Disclosure of Discovery Material that qualifies for protection under this Order must be clearly so
17 designated before the material is disclosed or produced.

18 Designation in conformity with this Order requires:

19 (a) for information in documentary form (e.g., paper or electronic documents, but
20 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
21 affix the legend "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
22 ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" to each page that contains protected
23 material. If only a portion or portions of the material on a page qualifies for protection, the
24 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
25 markings in the margins) and must specify, for each portion, the level of protection being asserted.

26 A Party or Non-Party that makes original documents or materials available for inspection
27 need not designate them for protection until after the inspecting Party has indicated which material
28 it would like copied and produced. During the inspection and before the designation, all of the

1 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
2 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
3 copied and produced, the Producing Party must determine which documents, or portions thereof,
4 qualify for protection under this Order. Then, before producing the specified documents, the
5 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
7 CODE”) to each page that contains Protected Material. If only a portion or portions of the material
8 on a page qualifies for protection, the Producing Party also must clearly identify the protected
9 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
10 portion, the level of protection being asserted.

11 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
12 Designating Party identify on the record, before the close of the deposition, hearing, or other
13 proceeding, all protected testimony and specify the level of protection being asserted. When it is
14 impractical to identify separately each portion of testimony that is entitled to protection and it
15 appears that substantial portions of the testimony may qualify for protection, the Designating Party
16 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
17 to have up to 21 days to identify the specific portions of the testimony as to which protection is
18 sought and to specify the level of protection being asserted. Only those portions of the testimony
19 that are appropriately designated for protection within the 21 days shall be covered by the
20 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at
21 the deposition or up to 21 days afterwards if that period is properly invoked, that the entire
22 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
23 ATTORNEYS’ EYES ONLY.”

24 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
25 other proceeding to include Protected Material so that the other parties can ensure that only
26 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
27 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
28 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL

1 – ATTORNEYS’ EYES ONLY.”

2 Transcripts containing Protected Material shall have an obvious legend on the title page that
 3 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
 4 (including line numbers as appropriate) that have been designated as Protected Material and the
 5 level of protection being asserted by the Designating Party. The Designating Party shall inform the
 6 court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-
 7 day period for designation shall be treated during that period as if it had been designated “HIGHLY
 8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After
 9 the expiration of that period, the transcript shall be treated only as actually designated.

10 (c) for information produced in some form other than documentary and for any
 11 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
 12 container or containers in which the information or item is stored the legend “CONFIDENTIAL”
 13 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
 14 – SOURCE CODE.” If only a portion or portions of the information or item warrant protection, the
 15 Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the
 16 level of protection being asserted.

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 18 designate qualified information or items does not, standing alone, waive the Designating Party’s
 19 right to secure protection under this Order for such material. Upon timely correction of a
 20 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
 21 in accordance with the provisions of this Order.

22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 24 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
 25 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 26 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
 27 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 28 original designation is disclosed.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
2 by providing written notice of each designation it is challenging and describing the basis for each
3 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
4 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
5 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
6 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
7 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
8 Party must explain the basis for its belief that the confidentiality designation was not proper and
9 must give the Designating Party an opportunity to review the designated material, to reconsider the
10 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
11 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
12 has engaged in this meet and confer process first or establishes that the Designating Party is
13 unwilling to participate in the meet and confer process in a timely manner.

14 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
15 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
16 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if
17 applicable) within 21 days of the initial notice of challenge or within 14 days of the parties
18 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. Each
19 such motion must be accompanied by a competent declaration affirming that the movant has
20 complied with the meet and confer requirements imposed in the preceding paragraph. Failure by
21 the Designating Party to make such a motion including the required declaration within 21 days (or
22 14 days, if applicable) shall automatically waive the confidentiality designation for each challenged
23 designation. In addition, the Challenging Party may file a motion challenging a confidentiality
24 designation at any time if there is good cause for doing so, including a challenge to the designation
25 of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision
26 must be accompanied by a competent declaration affirming that the movant has complied with the
27 meet and confer requirements imposed by the preceding paragraph.

28 The burden of persuasion in any such challenge proceeding shall be on the Designating

1 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
 2 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
 3 Unless the Designating Party has waived the confidentiality designation by failing to file a motion
 4 to retain confidentiality as described above, all parties shall continue to afford the material in
 5 question the level of protection to which it is entitled under the Producing Party's designation until
 6 the court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

8 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 9 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 10 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
 11 the categories of persons and under the conditions described in this Order. When the litigation has
 12 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL
 13 DISPOSITION).

14 Protected Material must be stored and maintained by a Receiving Party at a location and in
 15 a secure manner that ensures that access is limited to the persons authorized under this Order.

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
 17 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 18 information or item designated "CONFIDENTIAL" only to:

19 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
 20 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
 21 information for this litigation and who have signed the "Acknowledgment and Agreement to Be
 22 Bound" that is attached hereto as Exhibit A;

23 (b) the officers, directors, and employees (including House Counsel) of the
 24 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
 25 the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

26 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
 27 reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement
 28 to Be Bound" (Exhibit A);

1 (d) the court and its personnel;

2 (e) court reporters and their staff, professional jury or trial consultants, and
3 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
4 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

5 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
6 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
7 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
8 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
9 bound by the court reporter and may not be disclosed to anyone except as permitted under this
10 Stipulated Protective Order.

11 (g) the author or recipient of a document containing the information or a custodian
12 or other person who otherwise possessed or knew the information.

13 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and
14 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered
15 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
16 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
17 “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

18 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
19 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
20 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
21 Bound” that is attached hereto as Exhibit A;

22 (b) Designated House Counsel of the Receiving Party who has signed the
23 “Acknowledgment and Agreement to Be Bound” (Exhibit A), and as to whom the procedures set
24 forth in paragraph 7.4(a)(1), below, have been followed;

25 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary
26 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound”
27 (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been
28 followed];

1 (d) the court and its personnel;

2 (e) court reporters and their staff, professional jury or trial consultants, and
3 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
4 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

5 (f) the author or recipient of a document containing the information or a custodian
6 or other person who otherwise possessed or knew the information.

7 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information
9 or Items to Designated House Counsel or Experts.

10 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
11 Designating Party, a Party that seeks to disclose to Designated House Counsel any information or
12 item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
13 “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(b) first must make a
14 written request to the Designating Party that (1) sets forth the full name of the Designated House
15 Counsel and the city and state of his or her residence, and (2) describes the Designated House
16 Counsel’s current and reasonably foreseeable future primary job duties and responsibilities in
17 sufficient detail to determine if House Counsel is involved, or may become involved, in any
18 competitive decision-making.

19 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the
20 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
21 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
22 EYES ONLY” “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first
23 must make a written request to the Designating Party that (1) identifies the general categories of
24 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
25 SOURCE CODE” information that the Receiving Party seeks permission to disclose to the Expert,
26 (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3)
27 attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5)
28 identifies each person or entity from whom the Expert has received compensation or funding for

1 work in his or her areas of expertise or to whom the expert has provided professional services,
 2 including in connection with a litigation, at any time during the preceding five years,¹ and (6)
 3 identifies (by name and number of the case, filing date, and location of court) any litigation in
 4 connection with which the Expert has offered expert testimony, including through a declaration,
 5 report, or testimony at a deposition or trial, during the preceding five years.

6 (a)(3) “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
 7 EYES ONLY” information or items may be disclosed to an Expert without disclosure of the
 8 identity of the Expert as specified in Paragraph 7.4(a)(2) above as long as the Expert is not a
 9 current officer, director, or employee of a competitor of a Party or anticipated to become one.

10 (b) A Party that makes a request and provides the information specified in the
 11 preceding respective paragraphs may disclose the subject Protected Material to the identified
 12 Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party
 13 receives a written objection from the Designating Party. Any such objection must set forth in detail
 14 the grounds on which it is based.

15 (c) A Party that receives a timely written objection must meet and confer with the
 16 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement
 17 within seven days of the written objection. If no agreement is reached, the Party seeking to make
 18 the disclosure to Designated House Counsel or the Expert may file a motion as provided in Civil
 19 Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable)
 20 seeking permission from the court to do so. Any such motion must describe the circumstances with
 21 specificity, set forth in detail the reasons why the disclosure to Designated House Counsel or the
 22 Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest
 23 any additional means that could be used to reduce that risk. In addition, any such motion must be
 24 accompanied by a competent declaration describing the parties’ efforts to resolve the matter by
 25 agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the

26
 27 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should
 28 provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party
 seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

1 reasons advanced by the Designating Party for its refusal to approve the disclosure.

2 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the
3 Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under
4 the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material
5 to its Designated House Counsel or Expert.

6 8. SOURCE CODE

7 (a) To the extent production of source code becomes necessary in this case, a
8 Producing Party may designate source code as "HIGHLY CONFIDENTIAL - SOURCE CODE" if
9 it comprises or includes confidential, proprietary or trade secret source code.

10 (b) Protected Material designated as "HIGHLY CONFIDENTIAL – SOURCE
11 CODE" shall be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL –
12 ATTORNEYS' EYES ONLY" information, and may be disclosed only to the individuals to whom
13 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information may be disclosed, as
14 set forth in Paragraphs 7.3 and 7.4.

15 (c) Any source code produced in discovery shall be made available for
16 inspection, in a format allowing it to be reasonably reviewed and searched, during normal business
17 hours or at other mutually agreeable times, at an office of the Producing Party's counsel or another
18 mutually agreed upon location. The source code shall be made available for inspection on a secured
19 computer in a secured room without Internet access or network access to other computers, and the
20 Receiving Party shall not copy, remove, or otherwise transfer any portion of the source code onto
21 any recordable media or recordable device. The Producing Party may visually monitor the
22 activities of the Receiving Party's representatives during any source code review, but only to
23 ensure that there is no unauthorized recording, copying, or transmission of the source code.

24 (d) The Receiving Party may request paper copies of limited portions of source
25 code that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or
26 other papers, or for deposition or trial, but shall not request paper copies for the purposes of
27 reviewing the source code other than electronically as set forth in paragraph (c) in the first instance.
28 The Producing Party shall provide all such source code in paper form including bates numbers and

1 the label “HIGHLY CONFIDENTIAL - SOURCE CODE.” The Producing Party may challenge
 2 the amount of source code requested in hard copy form pursuant to the dispute resolution
 3 procedure and timeframes set forth in Paragraph 6 whereby the Producing Party is the
 4 “Challenging Party” and the Receiving Party is the “Designating Party” for purposes of dispute
 5 resolution.

6 (e) The Receiving Party shall maintain a record of any individual who has
 7 inspected any portion of the source code in electronic or paper form. The Receiving Party shall
 8 maintain all paper copies of any printed portions of the source code in a secured, locked area. The
 9 Receiving Party shall not create any electronic or other images of the paper copies and shall not
 10 convert any of the information contained in the paper copies into any electronic format. The
 11 Receiving Party shall only make additional paper copies if such additional copies are (1) necessary
 12 to prepare court filings, pleadings, or other papers (including a testifying expert’s expert report),
 13 (2) necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper
 14 copies used during a deposition shall be retrieved by the Producing Party at the end of each day and
 15 must not be given to or left with a court reporter or any other individual.

16 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 17 LITIGATION

18 If a Party is served with a subpoena or a court order issued in other litigation that
 19 compels disclosure of any information or items designated in this action as “CONFIDENTIAL,”
 20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
 21 SOURCE CODE,” that Party must:

22 (a) promptly notify in writing the Designating Party. Such notification shall include
 23 a copy of the subpoena or court order;

24 (b) promptly notify in writing the party who caused the subpoena or order to issue in
 25 the other litigation that some or all of the material covered by the subpoena or order is subject to
 26 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

27 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
 28 Designating Party whose Protected Material may be affected.

(d) If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”. Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and
3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party’s confidential information responsive to the discovery request. If the Non-

1 Party timely seeks a protective order, the Receiving Party shall not produce any information in its
 2 possession or control that is subject to the confidentiality agreement with the Non-Party before a
 3 determination by the court.. Absent a court order to the contrary, the Non-Party shall bear the
 4 burden and expense of seeking protection in this court of its Protected Material.

5 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

6 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
 7 Protected Material to any person or in any circumstance not authorized under this Stipulated
 8 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party
 9 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
 10 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made
 11 of all the terms of this Order, and (d) request such person or persons to execute the
 12 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

13 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
 14 MATERIAL

15 When a Producing Party gives notice to Receiving Parties that certain inadvertently
 16 produced material is subject to a claim of privilege or other protection, the obligations of the
 17 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
 18 is not intended to modify whatever procedure may be established in an e-discovery order that
 19 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence
 20 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
 21 communication or information covered by the attorney-client privilege or work product protection,
 22 the parties may incorporate their agreement in the stipulated protective order submitted to the
 23 court.

24 13. MISCELLANEOUS

25 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
 26 seek its modification by the court in the future.

27 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
 28 no Party waives any right it otherwise would have to object to disclosing or producing any

1 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
2 Party waives any right to object on any ground to use in evidence of any of the material covered by
3 this Protective Order.

4 13.3 Export Control. Disclosure of Protected Material shall be subject to all applicable
5 laws and regulations relating to the export of technical data contained in such Protected Material,
6 including the release of such technical data to foreign persons or nationals in the United States or
7 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical
8 data, and the Receiving Party shall take measures necessary to ensure compliance.

9 13.4 Filing Protected Material. Without written permission from the Designating Party or
10 a court order secured after appropriate notice to all interested persons, a Party may not file in the
11 public record in this action any Protected Material. A Party that seeks to file under seal any
12 Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected
13 Material may only be filed under seal pursuant to a court order authorizing the sealing of the
14 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a
15 sealing order will issue only upon a request establishing that the Protected Material at issue is
16 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a
17 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d)
18 and General Order 62 is denied by the court, then the Receiving Party may file the Protected
19 Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by
20 the court.

21 14. FINAL DISPOSITION

22 Within 60 days after the final disposition of this action, as defined in paragraph 4,
23 each Receiving Party must return all Protected Material to the Producing Party or destroy such
24 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
25 compilations, summaries, and any other format reproducing or capturing any of the Protected
26 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit
27 a written certification to the Producing Party (and, if not the same person or entity, to the
28 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all

1 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
 2 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
 3 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
 4 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
 5 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
 6 product, and consultant and expert work product, even if such materials contain Protected Material.
 7 Any such archival copies that contain or constitute Protected Material remain subject to this
 8 Protective Order as set forth in Section 4 (DURATION).

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10
 11 DATED: April 24, 2012.

12 DOWNEY BRAND LLP

13
 14 By /s/ M. Max Steinheimer
 15 M. Max Steinheimer
 16 Attorneys for Defendant
 17 The Conrad Corporation, dba Conquest Imaging

18
 19 DATED: April 24, 2012.

20 REED SMITH LLP

21
 22 By /s/ Stuart A. Shanus
 23 Stuart A. Shanus
 24 Attorneys for Plaintiff
 25 Siemens Medical Solutions USA, Inc.

26 PURSUANT TO STIPULATION, IT IS SO ORDERED.

27
 28 DATED: April 25, 2012


 The Honorable Samuel Conti
 Senior United States District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I have read
in its entirety and understand the Stipulated Protective Order that was issued by the United States
District Court for the Northern District of California on [date] in the case of Siemens Medical
Solutions USA, Inc. v. The Conrad Corporation, d/b/a Conquest Imaging Case No. 3:11-cv-04872-
SC. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and
I understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any person or entity
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number]
as my California agent for service of process in connection with this action or any proceedings
related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]